IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10222 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

DIVISIONAL CONTROLLER

Versus

SECRETARY

Appearance:

MR KM PARIKH for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 17/08/2000

JUDGEMENT

1. By way of the present petition, the petitioner challenges the award of the Industrial Tribunal, Ahmedabad in Reference (IT) No.62 of 1994 whereby the petitioner was ordered to fix the pay of the respondent

in the cadre of Traffic Inspector in such a way that his wages are not less than the employees junior to him.

2. The main contention of the petitioner is that the respondent had opted for the revised pay scale on 31.1.1989 when he was temporarily promoted to the post of Assistant Traffic Superintendent. When the respondent was reverted on his own request on 1.10.1992 to his original cadre of Traffic Inspector, the benefits of the revised pay scale were denied to him on the ground that he had once exercised the option for the new pay scale and he could not have been allowed to exercise that option again in his original cadre of Traffic Inspector. The learned counsel for the petitioner has relied upon the terms of the settlement and pointed out that the option to accept the new pay scales could be exercised only once. However, it is conceded that by Clause 9 of the same settlement, it is expressly stipulated that while fixing the pay scales of the employees, if the pay scale of any particular employee in the same cadre is fixed higher than that of an employee senior to him, then the senior employee has to be given the benefit of stepping up in terms of Service Regulation No.65 (e). This Service Regulation No.65 (e) issued by the petitioner reads as under:

"By virtue of revision in the pay scale of the employees of the Corporation, if the pay of a senior person is fixed lower than the pay of a person junior to him after granting next increment in the revised pay scale, the pay of a senior person should be stepped up equal to the pay of a junior person, subject to the following conditions, namely:-

1. That both employees (junior and senior) have opted or deemed to have opted for the revised scale with effect from the date of the revision of the pay scale.

2. That both the employees draw the pay at the different stages at the time of the revision of the pay scale and in that the senior draws more than the junior in the existing pay scale.

3. That the pay of both the employees is fixed in the same time scale at the same stage in the revised scale.

4. xxx xxx xxx

5. xxx xxx xxx "

The other submission on behalf of the petitioner is that the respondent cannot be deemed to have exercised his option in the cadre of Traffic Inspector and, in any case, the option cannot be deemed to have been exercised within the prescribed limitation of three months.

3. The learned counsel appearing for the respondent has submitted that, in the facts of this case, in effect, the option exercised by the respondent has been cancelled and his voluntary reversion results into punishment and denial of stepping up as a result of which his wages falls short of the wages paid to the employees junior to the respondent. The impugned order takes note of the fact that the dispute was raised after the last date for the exercise of the option. There is no dispute about the fact that in the cadre of Traffic Inspector the respondent was senior and by virtue of his reversion he would be entitled to lower pay in comparison to his junior. Under such circumstances, it is held by the impugned order that the pay fixation of the respondent has to be carried out as if he had exercised the option in the cadre of Traffic Inspector. It is important to note that the promotion of the respondent was, in any case, temporary and if he had been reverted to his original cadre by the petitioner, serious prejudice would have been caused if it were to be held that his rights to exercise the option in the cadre of Traffic Inspector was lost. Similarly, if, in the facts of this case, the respondent had taken voluntary reversion, the same situation cannot be allowed to arise to the prejudice of the respondent for no fault on his part.

4. Under the circumstances and for the reasons discussed as above, there is no reason or valid ground to interfere with the impugned award. Therefore, the petition is rejected. Rule is discharged with no order as to costs. The interim relief stands vacated.

Sd/-
(KMG Thilake)

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